

FILED

MAY 19 2006

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ANTOLIN ANDREWS,

Plaintiff - Appellant,

v.

TOM L. CAREY, Warden,

Defendant - Appellee.

No. 05-16948

D.C. No. CV-02-01815-FCD

MEMORANDUM^{*}

Appeal from the United States District Court
for the Eastern District of California
Frank C. Damrell, District Judge, Presiding

Submitted May 15, 2006^{**}

Before: B. FLETCHER, TROTT, and CALLAHAN, Circuit Judges.

Antolin Andrews, a former California state prisoner, appeals pro se from the district court's order denying his motion for costs in his action alleging denial of access to courts. We have jurisdiction under 28 U.S.C. § 1291. We review for

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

^{**} The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

abuse of discretion, *Champion Produce, Inc. v. Ruby Robinson Co.*, 342 F.3d 1016, 1020 (9th Cir. 2003), and we affirm.

The district court did not abuse its discretion by denying Andrews' motion for costs as he was not the prevailing party in his action against defendants. *See* Fed. R. Civ. P. 54(d)(1); *see also Buckhannon Bd. & Care Home, Inc. v. West Virginia Dept. of Health & Human Resources*, 532 U.S. 598, 603 (2001) (holding party who does not obtain judicial relief is not a prevailing party, even if party achieves its desired result because the commencement of the lawsuit causes the defendants to voluntarily change its conduct).

AFFIRMED.